

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

April 28, 2016

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Siburn, Mr. Delia and Mr. Mustacchi. Mr. Smith, Mr. Nappi and Mr. Sylvester were absent.

Adoption of Minutes

April 14, 2016 Conference Meeting

A motion was made by Mr. Siburn, seconded by Mr. Boyer, and carried by unanimous voice vote to adopt the minutes of the April 14, 2016 Conference Meeting as presented.

Applications for Review:

App.#5-16: Pete Dellomo, 144 Rutgers Avenue, Block 1705, Lot 2 (R-15 Zone)

Proposed principal additions including a second-level addition, a two-car garage addition and a covered front porch. The lot is a through lot with frontage and the driveway opening onto Rutgers Avenue and frontage also on Princeton Avenue. Relief is needed from Section 6.1.1B "Schedule of General Regulations" which requires a principal front yard setback of 50' where 50.01' is existing and 44' is proposed. The ordinance also allows a maximum "other" coverage of 10% where 9.38% is existing and 10.38% is proposed.

Mr. Mustacchi recused himself from the application.

Pete Dellomo was sworn and stated that he is seeking variances for front yard setback and lot coverage. He proposes to gut an existing structure, remove the roof, add a second floor and add an attached two-car garage.

In response to questions from the Board, Mr. Dellomo stated that the existing house has a basement, the proposed garage will be slab on grade and there will be a few steps in the garage to meet the first floor of the house.

Mr. Dellomo further stated that the front yard encroachment will consist of a 2' cantilever on the second floor and a 6' porch along the front of the building. The front yard setback will be 44' where 50' is required. He has reviewed a number of houses in the neighborhood and found that 10 of the houses on the street exceed the front yard setback, 9 of which by more than what he is proposing. The proposed home will be a four bedroom, single family home.

In response to further questions from the Board, Mr. Dellomo stated that the garage door will face Rutgers Avenue. The detached accessory building will remain but will not have a paved driveway leading to it. There will probably be a walkway to the accessory building. The building will be used for storage of lawn mowers and other equipment and there will be electricity but no running water, heat or sewer.

Discussion took place regarding the accessory structure and it was noted that the maximum size storage space usually allowed is 100 square feet and the proposed structure will be 400 square feet.

Open to Public

The hearing was opened to the public for questions or comments with regard to the application. There were no members of the public who had comments or questions.

Mr. Dellomo stated that he would have no objection to conditions of approval that the garage doors face Rutgers Avenue, that there be no driveway leading to the accessory structure and all access to the home will be from Rutgers Avenue. The preliminary plan for the outside of the home is to have some stone on the front and hardy plank siding. The height of the home will be less than 30'. There may be two trees that will have to be removed and a few dead trees in the front. He does not plan to remove anything that he does not need to remove. The next door neighbor has requested that he remove the existing

cedars since they are in bad shape. Mr. Dellomo stated that he will comply with the recommendations of the tree inspector.

A motion was made by Mr. Boyer, seconded by Mr. Delia, with respect to App#5-16: Pete Dellomo, 144 Rutgers Avenue, Block 1705, Lot 2 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 4-1 with Mr. Sullivan, Mr. Boyer Mr. Siburn and Mr. Delia voting in favor and Mr. Miller opposed.

App.#12-15: Anco Environmental Services, Inc., 40 Russo Place, Bl.1901, L. 40

Anco Environmental Services, Inc. ("Anco") is a company involved in oil tank removal and installation and also operates as a clean-up contractor. The property is also used for vehicle and equipment repair and as a storage yard for equipment. The fuel oil that is removed is retained in a tanker truck at 40 Russo Place and then sold. A company related to Anco is engaged in the cleaning and servicing of oil burners. The owner of the property was cited for noncompliance of Section 17.1.1 – "Use of land without receiving all required permits of approval." A zoning permit was not issued for the current use. The applicant is requesting approval to continue to operate its business – which is not an approved use – and would like to obtain all variances needed (including relief from Sections 17.1.1 "Prohibitions," Section 6.3.6A "Permitted Principal Uses," Section 6.3.6B "Permitted Accessory Uses," Section 6.1.1B "Schedule of General Regulations," Section 6.4.3A.6 "Nuisance Factors," Section 6.4.3B.26., and Section 6.4.3B.48.) There are also accessory structures – such as fuel tanks – on the property that do not comply with the required setbacks and/or permitted accessory Uses. (LI-Zone)

August Santore, attorney for the applicant, stated that the applicant submitted its application to the DEP on April 19 and should be advised if the application is deemed complete in 45 days. The full determination will take approximately 150 days. All of the moveable structures have been brought inside the property lines and the only structures that remain are the two very large structures because they will have to be relocated again. Everything that the applicant could do has been done.

Mr. Mistretta advised that he has asked the applicant to keep the Board advised of all correspondence to and from the DEP.

Mr. Santore agreed to return to the Board in August for a further update and stated that once the applicant resubmits its application new notice will be provided.

App.#8-16: James O'Keefe, 41 Putnam Avenue, Block 1803, Lot 9 (R-15 Zone)

The applicant is proposing to add a two-car garage, a second story above, and a small addition (approx. 46 s.f.) to the rear of this house on a corner lot. (Putnam Avenue is an improved street; Bolton Boulevard is a paper street.) Relief is needed from Section 6.1.1B "Schedule of General Regulations" because a 50' principal front yard setback from Putnam Avenue is required, while the existing setback is 39.66' and 43' is proposed. The required principal rear yard setback is 40', where 17' is existing and 19' is proposed. The amount of building coverage allowed is 15% where 12.04% is existing and 17.73% is proposed. The total lot coverage permitted is 25%, with 24.61% existing and 28.62% proposed. Nonconforming conditions are lot area, lot width, principal front yard setbacks from both Putnam Avenue and Bolton Boulevard; existing "other" coverage and existing rear yard setback. Also, an existing shed is located off of the property (on Township property).

Jonathan Clemente, attorney for the applicant, was present.

Michelle Gotowski, architect, was sworn and gave her professional and educational background and was accepted as an expert witness.

James O'Keefe was sworn and stated that the house is a three bedroom ranch with a screened porch off the kitchen. They are proposing to add a two car garage and put a second story on the house to change it into a four bedroom, 2½ bath house. The existing screened porch will be enclosed and made a part of the kitchen. An issue was raised as to the existing shed and fence on town property and those will be removed.

Mr. Clemente advised that the applicant will go through the process for delineation with the DEP since the property is located in the flood hazard area. He stated that the house has a basement but the garage is slab on grade.

Ms. Gotowski stated that the house is currently a ranch and the proposal is to add a second floor and expand the kitchen. A two car garage will be added and the master bedroom will be over that space. All the bedrooms will be upstairs and the living area will be downstairs. The existing deck will be removed and the door will be replaced with a window. The height of the house will not exceed 30'. Ms. Gotowski presented Exhibit A-1 – photo of the existing house.

Mr. O'Keefe stated that there are approximately 10 houses on Putnam. They are a mixed variety of homes and 4 or 5 of them have been redone in the last 10 years similar to what they are proposing. The lots are similar in size with most lots non-conforming.

Open to Public

The hearing was opened to the public for questions or comments with regard to the application.

Tom Kelly was sworn and stated that he is representing his mother who lives on Hamilton Avenue on property that abuts the applicant's property. Their concern is about the size of the project since the backyards are very close. The applicant is taking a small ranch house and doubling the square footage so looking out the back window of his mother's house they will just be seeing the house. He is concerned about the proximity to his mother's property.

Mr. Bernstein asked Mr. Kelly if he would like to have the applicant provide screening or trees along the rear property line and Mr. Kelly said yes.

Mr. Sullivan stated that the applicant should be required to replace the fence in the rear of the property and to install a 5' fence along the Bolton Blvd side of the house. The fence should be 100% on the applicant's property.

A motion was made by Mr. Miller, seconded by Mr. Siburn, with respect to App#8-16: James O'Keefe, 41 Putnam Avenue, Block 1803, Lot 9 (R-15 Zone) to approve the application with requested variances, subject to the conditions discussed and further subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board. The voice vote was 6-0 with Mr. Sullivan, Mr. Miller, Mr. Boyer, Mr. Siburn, Mr. Delia and Mr. Mustacchi voting in favor and none opposed.

Mr. Siburn left the meeting (8:30pm).

App.#2-16: Wireless EDGE Towers, LLC & Co-Applicant: New York SMSA Limited Partnership (d/b/a Verizon Wireless), 175 Watchung Blvd., Bl. 4903, L. 36 (OL-Zone)

Wireless EDGE is the tower company that won the Board of Education's bid to place a monopole and compound on the high school property and is appearing before the Board of Adjustment for approval of the monopole and the placement of Verizon's antennas at a centerline height of 124' on the

monopole. Verizon will also place its related equipment at the base of the pole. Wireless telecommunications antennas are not permitted in the OL-Zone; therefore, the Applicant is seeking use variance and a height variance. The Applicant is also seeking preliminary and final site plan approval.

Judy Fairweather, attorney for the applicant, stated that at the last session there was testimony by a radio frequency engineer, the President of the Board of Education, and Sergeant Schmidt of the Berkeley Heights Police Department. The applicant has submitted a copy of the bid award and the title report showing no deed restrictions or easements. Ms. Fairweather presented Exhibit A-5 – aerial view of the property.

Ron Peterson, civil engineer and planner, was sworn, gave his professional and educational background and was accepted as an expert witness.

Robert Simon, attorney representing property owners including Michael Azarian, Peter Gilson and John Karnash, stated that he had no questions with regard to Mr. Peterson's qualifications.

Mr. Peterson stated that he has reviewed the site plan and reports submitted with the application and the application complies with FCC standards and the New Jersey Radiation Protection Act. He did his own calculations and verified the applicant's results. For the Verizon antenna the maximum signal strength will be less than 1% of the FCC guidelines and less than .2% of the New Jersey requirements. With the addition of other carriers the maximum signal strength will be 2 ½%.

Open to Public

The hearing was opened to the public for questions with regard to Mr. Peterson's testimony.

Robert Simon, attorney representing property owners including Michael Azarian, Peter Gilson and John Karnash, questioned Mr. Peterson regarding the plans that he reviewed, the location of the proposed tower and the Verizon antenna, location of the warning notice required to be posted, at what point the radio frequency would exceed the limit, difference between radiation exposure to adults and children and whether Mr. Peterson's testimony would be different if the tower were located closer to the school building.

Mr. Peterson indicated the plans that he reviewed, explained how the calculations are done, stated that the warning notice would be posted at the

top of the tower near the antennas and not on the ground, the radio frequency would only exceed the limit at a point even with the antenna at that elevation, there is no evidence that children are more susceptible to radiation exposure, and his testimony would be the same if the tower were located closer to the school building.

Mr. Simon asked further questions regarding the number of times Mr. Peterson has testified on this subject and whether any of those applicants exceeded the FCC.

Mr. Peterson stated that he has testified in several hundred applications and none of those exceeded FCC standards.

Members of the public including Gail Moody and Dimitri Agatonov raised questions with regard to radiation levels, safety guidelines and how long a person could stay near the tower before being exposed to radiation.

Mr. Peterson stated that there is no danger of radiation exposure and as long as the tower meets the safety criteria a person could stay near it indefinitely.

Mr. Bernstein noted that the standards and guidelines are issued by the federal and state government and this Board has to follow those guidelines.

Josh Cottrell, engineer, was sworn, gave his professional and educational background and was accepted as an expert witness. Mr. Cottrell stated that Wireless Edge is proposing to install the facility at the southeast corner of the property with access through a paved path. He indicated on the plan the area of the proposed facility and the general elevation view showing the height of the tower. A 50' x 50' gravel area enclosed by 8' fence is also proposed and at the center there will be a 130' monopole. On top of the monopole at 124' Verizon will install its antennas and at the base a 10 x 20 concrete pad for equipment cabinets. The top 6' of the pole is reserved for municipal and emergency services antennas. There is also provision for locations for future carriers. Utilities required are electric and telephone which will be underground from the existing utility pole.

Mr. Cottrell further stated that as part of installation there will be a back-up generator to be used for extended power outages at the site. It will be tested for about half an hour every two weeks. The generator is diesel powered and its tank will have a 210 gallon capacity. The generator will be enclosed and will be well below decibel requirements for residents. The applicant has

identified what trees will need to be removed and will comply with the ordinance requirements for replacement. The applicant will also provide evergreen trees for buffering if required.

In response to questions from the Board, Mr. Cottrell stated that the pole will be 24" in diameter at the top and 58" at the bottom. It will be made of galvanized steel and grey in color. The height from the base to the top will be roughly 140' including the top of the whips. He does not know what size the police department antennas will be and the whip is just a few inches in diameter.

Michael Mistretta, Township Planner, was sworn and stated that the township ordinance prohibits storage of crude oil or any flammable liquids more than 55 gallons so a 210 gallon tank would require a variance. Mr. Mistretta asked that the Board be provided with a copy of the approval obtained from the State Board of Education.

Open to Public

The hearing was opened to the public for questions with regard to Mr. Cottrell's testimony.

Members of the public including Clint Parker, Robert Wagner, Michael Burke, Shamir Rhodes, Jack Repsha, Doug Greenway and Ed Vergara asked questions with regard to the access to the site, how long the construction will take, safety for children with trucks entering the area, maintenance schedule for the monopole, height of the pole above the baseball field, possible danger to residents from the 210 gallon tank of diesel fuel, type of truck that will deliver the fuel, distances between the 16' drop off and the location of the fence, how a person would get to the top of the pole, exhaust from the generator and why a variance is required for height.

Mr. Cottrell indicated the location of the access to the site and the location of the pole in relation to the baseball field. He stated that the construction will take about three months, the schedule for trucks accessing the site during construction and including fuel tanks will be worked out with the Board of Education and the Township construction department, maintenance will be done once every 4-6 weeks with notice to be given to the Board of Education, there will be no danger to residents since everything on the site will be grounded including the generator, the top of the pole can be reached with climbing pegs, all wiring will be underground except that existing wiring that needs to be upgraded will remain overhead, the exhaust from the generator

would be no greater than exhaust from an idling car and it will have to meet standards, and the height variance is required because the proposed pole will be 130' high where 125' is permitted.

Mr. Simon questioned Mr. Cottrell with regard to the site plan, how many similar projects he has worked on and if he is aware that the pole can be raised without further review by the Board. He raised further questions with regard to the location of the baseball field, who owns that property – the Board of Education or the City of Summit, use of the fields by high school and recreation teams, parking on the site, fall-down zone and possibility that the pole might fall on the fields or the bleachers, lighting, tree removal, and possible problem with ice falling from the pole.

Mr. Cottrell said he has worked on several hundred of these projects and he is aware that there is criteria through which the pole can be raised 10% without Board review. He does not have information regarding the ownership of the property or the use of the road and the fields. Mr. Cottrell explained that a fall-down zone is the radius around the base, indicated the location of the parking space and turn around area and stated that there will be a light in the equipment area that will be pointed down toward the equipment that will not be visible by the residents. The applicant will supply information to the Board as to tree removal and landscaping and will comply with township requirements as to tree replacement and buffering. Mr. Cottrell stated that this is not the kind of facility from which ice would fall.

With regard to the fall-down zone, Mr. Cottrell further stated that this type of monopole is designed to not fall over and all building codes will be followed. If the tower were to fall as a result of steel failure the tower would kink over. If a failure occurred due to high winds there would not be anyone on the fields under those conditions.

Mr. Mistretta reviewed the items that the applicant should provide including landscaping, tree removal plan, tree replacement plan, location and detail of the lighting, details of the shed and proposed improvements to the existing driveway. He suggested that the applicant review the steep slope ordinance and confirm whether the requirements are met or if a waiver should be requested.

Mr. Sullivan advised that the zoning chart should be revised, the scale should be corrected, the height of the whips should be identified and the State Board of Education documents and Board of Education resolution should be provided.

The hearing the this application was carried to June 23, 2016 with no further notice required. The applicant granted an extension to September 1, 2016.

Adjournment:

A motion was made by Mr. Delia, seconded by Mr. Mustacchi, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 10:45 PM.

Regina Giardina, Secretary Pro Tem